

Income Tax Information Bulletin #1

February 1993

(replaces bulletin #1 dated September 1986)

Disclaimer: Informational bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

Subject: FIDUCIARY INCOME TAX RETURN

Reference: IC 6-3-2-2; IC 5-3-4-1; IC 6-3-4-15; IC 6-8.1-10

REQUIREMENTS FOR FILING

Resident estates and trusts having federal taxable income or no federal taxable income due to distributions during the tax year must file Form IT-41, Indiana Fiduciary Income Tax Return.

Nonresident estates and trusts having federal taxable income for the tax year from within the State of Indiana must file Form IT-41. Federal taxable income from Indiana includes all allocable income from Indiana partnerships and S Corporations.

A bank with common trust funds filing Form 1065 for federal income tax purposes must file Form IT-65, Indiana Partnership Income Tax Return. The bank must also comply with the provisions of Internal Revenue Code Regulation 1.6032-1.

A bankruptcy estate of an individual will file Form IT-41 with an attached copy of the individual's income tax return. The fiduciary return will report only the amount of tax computed on the individual income tax return.

A guardian of a ward's estate will not file the fiduciary income tax return but will file an individual income tax return on behalf of the ward.

Charitable remainder trusts and charitable lead trusts filing federal Form 5227 will file Form IT-41 and attach a copy of Form 5227.

Unless required for purposes of identification, a grantor should not file the fiduciary income tax return. However, any income taxable to the grantor must be reported on a separate information sheet and attached to the fiduciary income tax return. The grantor would report such income and any allowable deductions on the individual income tax return.

DETERMINATION OF TAXABLE INCOME

"Adjusted gross income" for estates and trusts means "taxable income" as defined in Section 641(b) of the Internal Revenue Code, reduced by income that is exempt from state taxation by federal statute or by the United States Constitution. An estate or trust must "add-back" to its adjusted gross income the ordinary income portions of a lump-sum distribution eligible for the 5 or 10 year averaging method. The fiduciary must attach a copy of Form 4972 to the IT-41 if the fiduciary has elected to use the 5 or 10 year averaging method for a lump-sum distribution. The fiduciary may deduct federal estate tax attributable to the lump-sum distribution in arriving at the reportable amount of the distribution.

For purposes of filing the Indiana fiduciary income tax return, estates and trusts are classified as either resident or nonresident. The residence of an estate or trust is the place where it is administered.

Resident estates and trusts are taxable on all income regardless of where it is earned. Thus, resident fiduciaries must report all income wherever derived.

Nonresident estates and trusts are taxable in Indiana on all income derived from Indiana sources. Income derived from sources within and without Indiana shall be determined under IC 6-3-2-2. Nonresident estates and trusts must adjust federal taxable income (or loss) to reflect taxable income allocable to Indiana.

DEDUCTIONS ALLOCABLE TO TAX-EXEMPT INCOME

Deductions allocable to tax exempt income must be used only against tax exempt income. Any excess of such allocated deductions cannot be used to offset taxable income. Therefore, fiduciaries must "add back" administration expenses and all deductions attributable to tax-exempt income in arriving at Indiana taxable income.

CREDITS AGAINST TAX

Estates and trusts may claim, as a credit against adjusted gross income tax, taxes paid to other states on income subject to the Indiana tax. Contributions to Indiana colleges may so be claimed as a credit against the tax. However, allowable credits are subject to restrictions. Information Bulletin #28 should be consulted for the method of determining credit for taxes paid to another state. Schedule CC-40, Indiana College Credit, must be completed and attached to the return when claiming the credit for contributions to Indiana colleges.

NONRESIDENT BENEFICIARIES

A nonresident beneficiary of a trust or estate must file Form IT-40PNR if the fiduciary distributes income subject to Indiana income tax to the beneficiary. The following rules apply:

Net rents and royalties from tangible personal property are allocated to Indiana to the extent that the property is utilized in Indiana, or in their entirety if the taxpayer's commercial domicile is in Indiana and the taxpayer is not taxed in the state of utilization.

Net rents and royalties from real estate located in Indiana are allocated to Indiana.

Capital gains and losses from the sale of real estate are allocated to Indiana if the real estate is located in Indiana.

Capital gains and losses from the sale of tangible personal property are allocated to Indiana if the property had a situs in Indiana at the time of sale, or the commercial domicile of the taxpayer is in Indiana, and the taxpayer is not taxed in the state in which the property had a situs.

Capital gains and losses from the sale of intangible personal property are allocated to Indiana if the taxpayer's commercial domicile is in Indiana.

Interest and dividends are allocable to Indiana if the taxpayer's commercial domicile is in Indiana. Dividends from Indiana S corporations are taxable in full to non-resident shareholders.

Patent and copyright royalties are allocated to Indiana to the extent that the patent or copyright is utilized in Indiana, or if the commercial domicile of the taxpayer is in Indiana and the taxpayer is not taxed in the state where the patent or copyright is utilized.

WITHHOLDING REQUIREMENTS

A resident trust or estate distributing income to a nonresident beneficiary is required to withhold adjusted gross income tax there from at the time the distribution is made. Income subject to withholding includes any income subject to adjusted gross income tax, except interest and dividends, less the distributee's share of expenses, administrative fees and other allowable deductions. Examples include farm income, business income, rents and royalties from Indiana real estate, and other income subject to adjusted gross income tax. Income subject to withholding does not include interest, dividends (except dividends from an Indiana S Corporation), rents and royalties from out-of-state real property, distributions of corpus, or any other income not subject to adjusted gross income tax.

An Indiana fiduciary administering a trust or estate which is subject to the laws of another state is not subject to these withholding requirements to the extent that the distributions to nonresidents consist of income from out-of-state sources. In such cases, it is the situs or source of income which controls for withholding purposes. However, distributions from pension and profit-sharing trusts with Indiana assets are not subject to withholding, as the pension itself is the source of the income and the income is generally taxable by the state in which the distributee resides.

The withholding provisions apply only to distributions to nonresident beneficiaries. The beneficiary's residency should be determined at the time the beneficiary acquires a right to the distribution. Also, if the beneficiary is a nonresident when a distribution of income

is received, withholding on such distribution is required regardless of whether or not such nonresident may become a resident of Indiana before the calendar year's end. Part-year residents and nonresidents may take credit on their annual adjusted gross income tax returns for any tax withheld.

Fiduciaries must withhold adjusted gross income tax at the rate in effect for a particular taxable year. Any deficiency in taxes withheld and remitted to the state will cause the trust or estate to become liable for the penalties and interest imposed by IC 68.1-10. If not otherwise paid, the trust or estate may also be liable for the tax deficiency. The Department may, at its option, require the withholding agent to post a bond to ensure payment of the tax.

Trusts and estates required to withhold adjusted gross income tax under IC 6-3-4-15 shall file a withholding return and remit the tax shown to be due thereon by the 30th day of the month following the month during which the tax was withheld unless an earlier date is required by IC 6-3-4-8.1. A fiduciary administering more than one trust or estate may make a single withholding return, which should be accompanied by a schedule displaying the trusts or estates, the beneficiaries, the income subject to withholding, the distributions, and the tax withheld. Payment of the tax may be made with a single check.

Trusts and estates must furnish to each nonresident beneficiary a Form WH-18 by the 30th day of the month following the close of the calendar or fiscal year. This statement will indicate the total distributions to the beneficiary for the year and the amount of tax withheld, and will accompany the beneficiary's annual income tax return as proof of payment.

The withholding requirements imposed upon trusts and estates by IC 6-3-4-15 do not relieve these entities from filing their own annual income tax returns. Also, the withholding requirements do not relieve a nonresident beneficiary from filing an individual income tax return, regardless of whether tax will be owed in excess of that withheld by the fiduciary. Moreover, the nonresident beneficiary will be liable to the Department for any adjusted gross income tax which the fiduciary has failed to withhold.

If an Indiana fiduciary withholds tax from income distributions to a nonresident estate or trust which in turn passes through the income to a nonresident beneficiary, the Indiana fiduciary may designate the ultimate nonresident recipient as a "nominee" recipient who may claim the withheld Indiana tax. For further information about "nominee" withholding, see Information Bulletin #85, Nominee Withholding Procedures.

USE TAX

The purchase of all tangible personal property to be used by the fiduciary is subject to either the sales or the use tax. Generally, the sales tax should be paid at the time of purchase. However, if the seller is an out-of-state merchant, or if, for any other reason, the sales tax is not paid at the time of purchase, the buyer is liable for payment of the use tax at the same rate as the sales tax. For further information, see Indiana Department of Revenue, Sales Tax Information Bulletin #31.

ESTIMATED PAYMENTS

Indiana does not require trusts and estates to make estimated payments. Fiduciaries electing to make estimated payments must use Form IT-41ES, Fiduciary Estimated Tax and Extension Payment Voucher.

EXTENSIONS

If an estate or trust is unable to complete the return by the due date, the fiduciary may request an extension of time to file Form IT-41. To obtain an extension of time to file Form IT-41, the fiduciary must either file a copy of the approved request for extension of time to file the Federal Fiduciary Return (Form 2758 or Form 8736) or Form IT-9, Indiana Application for Extension. The fiduciary must pay at least 90% of the estimated Indiana tax liability by the due date of the return. The payment must be made with a completed Form IT-4 IES.

TAXABLE YEAR DEFINED

The taxable year shall be the taxable year of the taxpayer as shown on Form 1041, U.S. Fiduciary Income Tax Return.

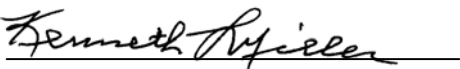
DUE DATES AND PERSONS REQUIRED TO FILE RETURNS

Returns of estates and trusts shall be filed on or before the fifteenth day of the fourth month following the close of the taxable year or on or before the extended due date if the taxpayer has requested and received an extension of time for filing such return. The fiduciary (executor or trustee) shall file the return of the estate or trust. The fiduciary must attach a copy of Federal Form K-1 for each beneficiary.

MAILING ADDRESS

All fiduciary income tax returns are to be mailed to the following address:

Fiduciary Section
Indiana Department of Revenue
P. O. Box 6079
Indianapolis, Indiana

A handwritten signature in black ink, appearing to read "Kenneth L. Miller", is written over a horizontal line.

Kenneth L. Miller
Commissioner